

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL-TONY VELEZ,

PLAINTIFF,

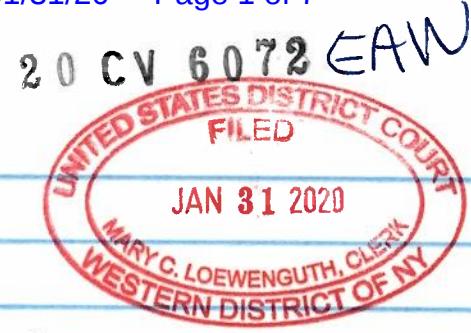
-v-

SANDY KELSEY, individually and
OFFICIAL CAPACITY AS MEDICAL
PRACTITIONER,

L. BAKER, individually and official
Capacity as RN,

JOHN and JANE DOE, individually
and official capacity as correction
staff.

DEFENDANTS.



CIVIL RIGHTS COMPLAINT
PURSUANT TO 42 U.S.C.
§1983

JURY TRIAL DEMAND

CIVIL ACTION NO.

Plaintiff Michael-Tony Velez, in the above-captioned action alleges as follows:

JURISDICTION

1) This is a civil action seeking to redress the deprivation, under color of State Law, of rights secured by the Constitution of the United States. This Civil Action is authorized by 42 U.S.C. §1983, and this Court has jurisdiction under 28 U.S.C. §1331 and §1333(a)(3). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. §2201 and §2202. Plaintiff claims for injunctive relief are authorized by 28 U.S.C. §2283 and §2284 and Rule 65 F.R.C.P.

2) The Western District is an appropriate venue under 28 U.S.C. §1331(b)(2) because it is where the events giving rise to this claim occurred.

PARTIES

3) Plaintiff, Michael - Tony Velez, was at all times mentioned herein a prisoner of the State of New York in the care, custody and control of the Department of Correction and Community Service (D.O.C.C.S) Presently detained in Shawangunk C.F. P.O. Box 700, Wallkill, New York 12589.

4) Defendant Sandy Kelsey, is or was a Medical Practitioner, at Elmira C.F. P.O. Box 500, Elmira, New York 14902-0500.

5) Defendant L. Baker, is or was a Medical R.N. at Elmira C.F. P.O. Box 500, Elmira, New York 14902-0500.

6) JOHN DOE, was or is a correction officer at ELMIRA C.F. P.O. Box 500, Elmira, New York 14902-0500.

7) JANE DOE, was or is a medical staff at ELMIRA C.F. P.O. Box 500, Elmira, New York 14902-0500.

8) Each/All Defendants is sued individually and in their official capacities. At all times mentioned each/all Defendant acted under color of state law.

FACTS

9) On March 19, 2017, Plaintiff was assaulted by correction staff and placed in my cell in I-Block 1 company 11 cell.

10) On March 20, 2017, Plaintiff filed a grievance, issued #EL-47-135-17, and a grievance area sgt. called Medical and had me escorted to Medical.

11) The Defendant John Doe, escorted me to Medical

Pushing and taunting Plaintiff, as Plaintiff had difficulty walking, breathing and even talking, and telling Plaintiff, if Plaintiff tells on the officers, they will finish the job started "yesterday".

12) Jane Doe, was a medical staff to whom Plaintiff informed that he was assaulted and had difficulty breathing, and all movement hurt, she stated nothing was wrong with me and spoke to another medical staff.

13) Defendant L. Baker, was the R.N. whom fabricated the medical document covering up the injuries and claimed a boot print on my chest was allegedly a rash, and refused to provide any medical attention, and had Plaintiff sign, under threat of further retaliation.

14) Plaintiff, Filed another grievance as a result of the deliberate indifference to his serious medical needs and was issued Grievance No. EL-47-176-17.

15) Defendant Sandy Kelsey, Fabricated a False document in reply to Grievance No. EL-47-176-17, Claiming Plaintiff's ribs were allegedly X-Rayed and showed no fracture.

16) The grievance Sgt. and officer, noted in their reply that Defendant Kelsey's reply was questionable as she claims that X-Ray's were conducted of the injury prior to the injuries, and noted that a correction officer was the one who instigated the request that Plaintiff receive medical when he received Complaint EL-47-135-17, on 3/20/17.

17) Plaintiff filed an additional Grievance No. 47-486-17 as Defendant Kelsey, in further retaliation, had Plaintiff's

T.E.N.S. unit Confiscated, and Continued to deny medical attention to Plaintiff's Serious Medical needs, as Demonstrated in Grievance No. EL-47-486-17.

18) From April 19, 2017 not until February 13, 2017, were X-Ray's taken of My ribs, which showed 2 Fractured Ribs, and Defendant Kelsey, claimed there were no Fractures, until Plaintiff pointed out that He saw the X-Ray's and they clearly show 2 Fractured Ribs.

19) Defendant Kelsey did not provide Plaintiff any Medical treatment, totally disregarding the Fact that not only did Plaintiff have 2 Fractured Ribs but a collapsed lung.

20) On information provided by Medical Staff at Shawangunk C.F. Plaintiff learned that he also had a collapsed lung.

21) Plaintiff Filed Grievance No. 47-265-17, and Defendant Kelsey, once again covered her actions, as Demonstrated in all Grievances Reply. She claimed to have offered Motrin, which both My Federal and State Medical Records show I am not to be given do to the side effects, she claimed to have offered Plaintiff stronger Medication, and a stay in the hospital, yet all of this is the very same lie, she states on all Grievances Filed against her, and medical.

22) Plaintiff was unable to defecate For over a week as a result of the pain.

23) Plaintiff was unable to sleep For over 2

months, as it was too painful to lay down, be it on my back, side not fractured.

24) Plaintiff was unable to even eat a full meal as any expansion to the area caused pain, forcing Plaintiff to eat chips and light snacks.

25) Plaintiff had problems even breathing, as it hurt, the pain was so bad that it paralyzed me in place till it calmed down.

26) Defendant's each/all Followed an on going systematic, policy and procedure covering up all assaults by correction staff, and denying Medical attention, and as demonstrated in this Complaint claim to offer and every one allegedly refuses treatment.

EXHAUSTION OF LEGAL REMEDIES

27) Plaintiff used the Faulty Grievance procedure of the New York D.O.C.C.S. at Elmira C.E. to try and solve the problem with Medical to no avail as demonstrated by filing Grievance No.'s. EL-47-135-17, EL-47-176-17, EL-47-265-17, and EL-47-486-17.

LEGAL CLAIM

28) Plaintiff, realleges and incorporates by reference paragraphs 1 through 27.

29) The deliberate indifference to Plaintiff's Medical needs violated Plaintiff's, which were very serious medical needs violated Plaintiff's Constitutional right to be free from cruel and inhumane, and unusual punishment, in violation of the Eighth and Fourteenth Amendments of

united States Constitution.

30) The acts of each/all Defendant as stated were retaliatory in cause and nature to deliberately deny Plaintiff of Medical attention to his serious Medical needs in order to cover up the assault against Plaintiff by Correction Officers, and did deny Plaintiff Medical attention.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully request this Honorable Court grant the following relief:

A) Issue a declaratory judgment against each/all defendant and D.O.C.C.S. For their will full disregard of Plaintiff's Constitutional Rights, in covering up the injuries caused by the Assault by Correction Officers, arbitrarily and capriciously denying Medical Attention to Plaintiff's Serious Medical Needs, and were deliberately indifferent to those Serious Medical needs.

B) Issue an Injunction, ordering Defendants each/all to preserve, all Medical Document, Log Book entries, X-Ray's, Grievance Complaints and Answers, and all outstanding and pending actions against the Defendants, and that no document be lost or destroyed.

C) A preliminary and permanent injunction ordering Defendants each/all and D.O.C.C.S. Not to further retaliate against the Plaintiff in any way or means to include any Parole Hearings, Medical appointments and treatment.

D) Compensatory damages in the amount of

\$250,000.00 against each/all Defendant Individually.

E) Punitive damages in the amount of \$5,000,000.00 against each/all Defendant Individually.

F) A Jury trial on all issues triable by Jury.

G) Plaintiff's Cost and Fees in this suit.

31) Plaintiff has not Filed any other lawsuit in Federal Court which relates to my imprisonment in D.O.C.C.S.

32) Plaintiff has not Filed any other Law Suit in State or Federal Court dealing with the same Facts in this action.

FURTHER, Plaintiff seeks any/all additional relief this court deems just, proper and equitable.

I declare under Penalty of perjury that the foregoing is true and correct. Executed on this 27 day of January 2020

Michael-Tony Velez
MICHAEL-TONY VÉLEZ

RESPECTFULLY SUBMITTED

Michael-Tony Velez
MICHAEL-TONY VÉLEZ

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P.O. Box 700

WALLKILL, NEW YORK 12589